

STATE OF CALIFORNIA  
California Law Revision Commission

TENTATIVE RECOMMENDATION  
*relating to*  
THE NEW ESTATE AND TRUST CODE

**DETERMINING CLASS MEMBERSHIP**

September 1986

*This tentative recommendation is being distributed so that interested persons will be advised of the Commission's tentative conclusions and can make their views known to the Commission. Any comments sent to the Commission will be considered when the Commission determines the provisions it will include in legislation the Commission plans to recommend to the Legislature in 1987. It is just as important to advise the Commission that you approve the tentative recommendation as it is to advise the Commission that you believe revisions should be made in the tentative recommendation.*

COMMENTS ON THIS TENTATIVE RECOMMENDATION SHOULD BE SENT TO THE COMMISSION NOT LATER THAN NOVEMBER 15, 1986.

*The Commission often substantially revises tentative recommendations as a result of the comments it receives. Hence, this tentative recommendation is not necessarily the recommendation the Commission will submit to the Legislature.*

CALIFORNIA LAW REVISION COMMISSION  
4000 Middlefield Road, Suite D-2  
Palo Alto, CA 94303-4739

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# LETTER OF TRANSMITTAL

The California Law Revision Commission is now devoting its time and resources almost exclusively to the study of probate law and procedure. The ultimate goal is to submit a new Estate and Trust Code to the Legislature. The new code will replace the existing Probate Code.

Pending preparation of the entire new code, however, some revisions will be proposed in the existing Probate Code. This tentative recommendation sets forth the Commission's tentative conclusions relating to determining members of a class, which would supersede Probate Code Sections 1190-1192.

The explanatory text of this tentative recommendation indicates the background of this proposal and indicates the principal revisions it would make in existing law.

The proposed legislation is drafted as a part of the new code. In some cases, you will find a reference to other parts of the new code that are still being prepared and are not yet available.

A comment follows each section of the proposed legislation. The comment gives the source of the section and indicates the nature of the changes the section would make in existing law.

Comments showing the disposition of each section of existing law that would be repealed in the proposed legislation can be found at the end of this tentative recommendation.

TENTATIVE RECOMMENDATION  
relating to  
DETERMINING MEMBERS OF CLASS

Existing law provides a procedure to determine the membership of a class described as heirs, heirs of the body, issue, or children.<sup>1</sup> This procedure is not available to determine class membership if the property passes by intestate succession.<sup>2</sup> The decree of the court is prima facie evidence of the facts determined and protects persons dealing with the petitioner in good faith and without notice of conflicting interests.<sup>3</sup>

The new code continues this procedure, but makes it available to determine membership in any class, not only classes described as heirs, heirs of the body, issue, or children. The need to obtain a court determination of class membership may be just as great in cases where, for example, the class is described in terms of family membership, such as relatives or next of kin, or by some other general class description. The new code also makes the procedure available in cases where the property passes by intestate succession and thus covers cases where a person's right to the property has not been determined during administration.

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1. Prob. Code §§ 1190-1192.

2. Prob. Code § 1190.

3. Prob. Code § 1192. The proceeding determines a person's identity within the described class; it does not determine the legal right to property and does not appear to provide a forum for determination of conflicting claims to estate property. See Magaram, *Determining Interests in Estate Distribution*, in 2 California Decedent Estate Administration § 24.10, at 1048 (Cal. Cont. Ed. Bar 1975).

## **OUTLINE OF STATUTE**

### **PART 10. DETERMINING IDENTITY OF CLASS MEMBERS**

- § 320. Proceeding authorized**
- § 321. Petition**
- § 322. Notice of hearing**
- § 323. Responsive pleading**
- § 324. Hearing and order**
- § 325. Appeal**

## PART 10. DETERMINING IDENTITY OF CLASS MEMBERS

### § 320. Proceeding authorized

320. (a) If title to property vests in a class, a person claiming to be a member of the class may commence proceedings under this part to determine the person's identity as a member of the class.

(b) As used in this section, "person claiming to be a member of the class" includes the successor in interest of the person and the personal representative of the person or successor in interest.

Comment. Subdivision (a) of Section 320 replaces the first portion of former Section 1190. Unlike former Probate Code Sections 1190-1192, the procedure of this part is not limited to cases where the class is described as heirs, heirs of the body, issue, or children. This procedure is available to determine whether a person is a member of any class, whereas former law did not apply where title had vested by the laws of succession. For other procedures to determine class members, see, e.g., Sections [1080] (determination of heirship in proceedings for administration of estate), 17200(b)(4) (determination of trust beneficiaries).

Subdivision (b) restates part of former Probate Code Section 1190 without substantive change.

### § 321. Petition

321. (a) Proceedings under this part shall be commenced in the superior court of the county in which the property or any part of the property is situated.

(b) Proceedings under this part shall be commenced by filing a verified petition that includes all of the following information:

(1) The basis of the petitioner's claim of title.

(2) A description of the property.

(3) So far as known to the petitioner, the names, ages, and mailing addresses of the members of the class whose identity is sought to be determined. If any member is dead or if the mailing address of any member is unknown, the petition shall state these facts.

Comment. Section 321 restates the last part of former Section 1190 without substantive change, but applies to members of any class, consistent with Section 320. In addition, the petitioner is required to supply the mailing addresses, rather than the residences, of class members.

Note. The verification requirement may be generalized for the entire code.

**§ 322. Notice of hearing**

322. (a) The clerk shall set the petition for hearing by the court.

(b) The clerk shall give notice of the hearing in the manner prescribed in Section [1200].

(c) The petitioner shall cause notice of the hearing to be given in the manner prescribed in Section [1200.5].

**Comment.** Section 322 restates former Probate Code Section 1191 without substantive change.

**Note.** The notice provisions are under review. Subdivision (a) may not be necessary if it is made a general provision applicable to this part of the code.

**§ 323. Responsive pleading**

323. At any time before the hearing, a person interested in the property may file a response to the petition that denies or supports any of the matters included in the petition.

**Comment.** Section 323 replaces the first sentence of former Probate Code Section 1192. Section 323 provides for the filing of a response instead of an answer and recognizes that the response may support, as well as deny, any matter in the petition.

**§ 324. Hearing and order**

324. (a) The court shall hear the evidence offered by the petitioner and by any contestant and shall make an order determining the membership of the petitioner in the class.

(b) The court order is prima facie evidence of the facts determined and is conclusive in favor of any person acting in reliance on the order in good faith without notice of any conflicting interest.

**Comment.** Section 324 restates the second and third sentences of former Probate Code Section 1192 without substantive change.

**§ 325. Appeal**

325. The making of or refusal to make an order under Section 324 is appealable.

**Comment.** Section 325 replaces part of subdivision (m) of former Probate Code Section 1240 [as amended by 1986 Cal. Stat. ch. 820].

09/18/86

COMMENTS TO REPEALED SECTIONS

Probate Code § 1190 (repealed). Petition to determine members of class

Comment. The first part of former Section 1190 is replaced by subdivision (a) of Estate and Trust Code Section 320 (proceeding authorized) without substantive change. The last part is restated in Estate and Trust Code Section 321 (petition) without substantive change.

Probate Code § 1191 (repealed). Setting for hearing; notice

Comment. Former Section 1191 is restated in Estate and Trust Code Section 322 (notice of hearing) without substantive change.

Probate Code § 1192 (repealed). Hearing; conclusiveness of order

Comment. The first sentence of former Section 1192 is replaced by Estate and Trust Code Section 323 (responsive pleading). The second and third sentences are restated in Estate and Trust Code Section 324 (hearing and order) without substantive change.